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Appendix

North Dakota State Bar Association

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APPENDIX

CONSTITUTION AND BY-LAWS OF THE STATE BAR
ASSOCIATION OF NORTH DAKOTA, AS
AMENDED TO 1926.

"In compliance with the provisions of an act passed at the 17th session of the Legislative Assembly of the state of North Dakota, approved March 11, 1921, entitled "An Act to Create, Define and Establish the Bar Association of the State of North Dakota," and for other purposes incident thereto, the membership of the Bar Association of North Dakota, in annual session assembled, adopts the following constitution and by-laws:

Article 1

The name of this association is the Bar Association of North Dakota.

Article 2

Objects: The objects of this association shall be to promote the administration of justice, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the State Bar.

Article 3

Membership: The membership of this association shall consist of all practicing attorneys who have paid their annual dues and received their license from the clerk of the State Bar Board, of the state of North Dakota, and all other attorneys who have been duly admitted to practice by the supreme court of this state and are by law exempt from the payment of dues, and all such members shall be entitled to all the rights and privileges of the association and to vote and participate in the business transacted at its meetings.

Article 4

Officers: The officers of this association shall be a president, vice-president, and secretary-treasurer, who shall be elected at the annual meeting of the association and hold their offices until the next annual meeting succeeding their election.

Article 5

Executive Committee: The executive committee shall consist of the officers of this association and one person from each judicial district of the state, who shall be appointed by the president of the association.

Article 6

Duties of the officers: The duties of the officers of this association shall be such as usually devolve upon officers of like organizations.

Article 7

Duties of the executive committee: The duties of the executive committee shall be such as may from time to time be imposed upon it by the by-laws of this association.

Article 8

Standing Committees: It shall be the duty of the president to appoint such standing committees of the association as may from time to time be provided for by the by-laws of this association, such appointments to be made immediately after the annual meeting each year.

Article 9

Referendum: Whenever a petition signed by not less than thirty members of this association shall be presented to the president, asking that a vote of the members of the association be had on any measure affecting the public interest, state or national, or by way of indorsement of candidates for judicial or other office, the president and executive committee shall forthwith and within ten days provide for the submission of such question or measure to a vote of the members by the postal ballot, the details of which shall be prescribed by the executive committee. Such referendum shall be by secret ballot and thirty days from date of mailing, the ballots shall be allowed for completion of the votes. At the expiration of that time the ballots shall be canvassed by the president and secretary, and by a judge of the supreme court or district court to be selected by the president, and the result shall be published in three daily newspapers published in the state, one of which shall be published at the capital of this state. *No expression of approval or disapproval by this Bar Association on any such measure or candidacy shall be given in any other manner.*

Article 10

Amendments: This constitution may be amended at any annual meeting by a two-thirds vote of the members present (see page 19, 1921 proceedings) upon amendments which have been

suggested at a previous annual meeting, or amendments which has been suggested at the next preceding annual meeting.

Article 11

See page 16, 1921 proceedings. A quorum for any regular or special meeting shall consist of twenty-five members.

BY-LAWS

Article 1

Meetings: Sec. 1. Regular Meetings. This association shall meet at least once each year, at such time and place as shall be designated for that purpose by the executive committee.

Sec. 2. Special Meetings. Whenever the exigency presents itself, the president of this association may, and on request of any twenty members in writing, shall call a special meeting of the association at a time and place to be designated by him.

Sec. 3. Notice of Meetings. The secretary shall send notices of the time so selected to each member by mail at least ten days before the date of the meeting.

Article 2

Dues: No payment of annual dues shall be required of members of this association if the appropriation from time to time made by the legislative assembly shall be sufficient to defray the legitimate expenses of the association, but assessments of not to exceed one dollar for each member may be made upon the resolution adopted by a majority vote at an annual meeting, or at any special meeting if due notice be given in the call for such special meeting that such assessment will be proposed.

Article 3

Duties of the Executive Committee: The executive committee shall make all necessary arrangements for the meeting of the association, and provide in their discretion for its entertainment, prepare the programs for its proceedings, audit all bills against the association, and the accounts of the secretary-treasurer, and perform such other duties as may be required by the association.

Article 4

Duties of the Secretary-Treasurer: The secretary-treasurer shall keep correct and full report of the proceedings of the meetings of the association and of its executive committee and shall collect and receive all money appropriated by the state or otherwise collected on assessments of the membership, and keep true and correct account of the same, and shall pay out such moneys on the order of the executive committee from time to time and

upon vouchers drawn by the president and secretary, and he shall make a full and detailed report of all receipts and disbursements accompanied by the vouchers and paid checks, to be submitted to the executive committee and to the next annual meeting after his election, and he shall file in the office of the clerk of the State Bar Board a duplicate of such itemized statement of receipts and disbursements. The secretary-treasurer shall give a surety bond in the sum of Two Thousand dollars running to the state of North Dakota, the premium on which shall be paid by the association. Said bond shall be conditioned for the faithful accounting by him for all funds and property which may come into his hands by virtue of his office, and for the delivery thereof to his successor at the expiration of his term of office. The secretary-treasurer shall receive as compensation for his services such sums as may be fixed or allowed from time to time by the executive committee.

Amended 1921—page 8 as amended 1924, page 54-60.

Article 5

Standing Committees: There shall be appointed annually by the president immediately after his election, the following standing committees:

1. Jurisprudence and Law Reform.
2. Legal Education and Admission to the Bar.
3. Legislative Committee.

The duties of the committees shall be as follows:

1. Jurisprudence and Law Reform. The committee upon jurisprudence and law reform shall receive and consider from any member of the bar of the state at any time proposed amendments to the code, and shall at each meeting of the association report what changes, if any, have been made by the legislature since the last meeting, and any modifications of the rules of practice that shall have been made by the supreme court, and in addition to such reports shall recommend such changes in the code and in the practice as shall seem to said committee to be proper and advantageous to the end of securing a proper reform of the laws.

Three weeks prior to the date of any annual meeting it shall file with the secretary of this association a statement of the matters upon which it will recommend legislative action, such statement to embody all proposed amendments to existing laws and all new laws recommended by such committees, and that upon filing such statement the secretary shall cause the same to be printed or typewritten and that he forthwith mail a copy thereof to each member of this association.

2. Legal Education. The committee on legal education and admission to the bar shall confer with and recommend to the faculty of the School of Law of the State University a suitable course of study to be pursued as a qualification for admission to the bar, and shall also confer with and recommend to the supreme court a standard of education and qualification to be adhered to as a pre-requisite to admission to the bar, and shall report in regard to such matters at each meeting of the bar association.

3. Legislative Committee. There shall be appointed, by the president, for a term of two years a legislative committee of fifteen members of which the president of this association shall be chairman. The duties of said committee shall be to properly formulate all propositions approved by the association for the enactment of new laws or the alteration and amending of existing statutes, to supervise and direct the due presentment and course in the legislature of legislative bills formulated by it at the next succeeding session of said legislature, and to use, in the name of the association, every honorable means and influence to secure the passage and enactment into law of the measures so introduced.

Article 6

Compensation: No officer other than the secretary-treasurer shall receive compensation for his services, but the expenses of the officers of the association and the members of executive committee who shall attend the regular or special meetings of the association, or duly called meetings of the executive committee, shall be paid out of the funds received from the State Bar Board as provided by law. Such payment shall be made upon the detailed statement to be rendered by each officer, or committeeman showing the actual cash expenses of attendance at each meeting, or such meetings.

Article 7

Additional Committees: In addition to the standing committees provided by article 5 there shall be appointed by the president, with the concurrence of the executive committee, such other committees as shall be necessary from time to time to effectively accomplish the purpose for which this association is organized and to carry out the work undertaken by the association at its annual meeting.

As amended 1924 pages 55-56-60-63.

Article 8

Amendments: These by-laws may be amended at any time

by a majority vote of the members present and voting at any regular meeting of the association.

* * *

The executive committee reported the adoption of the following at the 1924 meeting, page 13, no formal addition to the by-laws was made, except as evidenced by article 7 of the by-laws:

"Be it Resolved: That there be formed within said association the following sections, viz:

- "1. A criminal law section.
- "2. A comparative law section.
- "3. A judicial section.
- "4. A legal education section.
- "5. A public utilities section.
- "6. A uniform and national practice section.
- "7. An Americanization section.
- "8. A classification and re-statement of the law section.
- "9. A bench and bar ethics section.
- "10. A legal aid work section.
- "11. A law endorcement section.
- "12. An office, printing, books, and supplies section.
- "13. An Internal Affairs (of association) section.

"Each section shall meet at least once a year on seven or more days notice from the chairman of the section, and with the exception of the section on Americanization each section shall be composed of such number of attorneys as the president of the State Bar Association shall designate, he naming the chairman and personnel of each section and the section on Americanization shall consist of one member of the association in each county in the state, and a chairman of the committee in addition, all named by the president of the association.

"The proceedings or any part of them of any of these sections may, in the discretion of the executive committee, be published.

"Each section must make a report at least at each annual meeting of the association, giving in detail the work accomplished, with recommendations.

"Any matters arising in the association properly referable to any of such sections may be referred thereto.

"Appropriations may be made from time to time by the executive committee of the association to any section, but the financial liability of the association to the sections, shall be limited to such appropriations as may be made for them and shall cease upon pay-

ment to the treasurers of such sections or conferences of the amount so appropriated.

"The duties of each of such sections shall be such as are usual, natural and necessarily the functions of such sections.

"1. The criminal law section shall carefully consider the criminal law and procedure in this state and recommend such timely changes, codifications, etc., in the law and procedure as may be properly applicable to the state of North Dakota, to the end that the law and procedure may be improved thereby.

"2. The comparative law section shall consider the matter of laws of this state as compared with the laws of other states, foreign and domestic, and make reports when and where our laws may be improved.

"3. The judicial section consists of judges and ex-judges of courts of record in our state and nation, a part of whose duty it shall be to regain and to retain for the courts of North Dakota and the United States their time-honored eminence and position in the hearts of our people and in the estimation of the world.

"4. The legal education section shall be particularly bound to raise the standard of education and secure the highest character of applicants for admission to the bar of North Dakota.

"5. The public utilities section shall be specially authorized to secure just and equitable rates for the public and for the public utilities operating or to operate in North Dakota.

"6. The uniform state and national practice section shall endeavor to secure a uniform practice act for the various similar courts of the states and nation.

"The foregoing statements are not to be construed as limiting the duties of such section but only as suggestions as to the duties to be by them performed; nor does the foregoing limit the committees which shall or may be appointed by the president of this association."

The motion was carried unanimously, 1924—page 15.

CODE OF PROFESSION ETHICS OF NORTH DAKOTA STATE BAR ASSOCIATION

I. *Preamble.* Whereas, in upholding the law of state and nation, in the dispensation of justice in the courts, and as a citizen of our Great Republic, the lawyer occupies a position of prominence and responsibility which requires and has always been founded upon the highest conception of honesty, integrity, and social conduct, therefore, in recognition of this position and re-

sponsibility and in maintenance of the high ideals upon which the legal profession is grounded, the following Code of Professional Ethics is hereby enacted and promulgated by the North Dakota State Bar Association.

2. *Duties of lawyers to courts and judicial officers.* The law enjoins respect for courts and judicial officers, for the sake of the office and not for the sake of the individual who for the time being administers its functions. A bad opinion of the incumbent of a judicial office, however well founded, cannot justify the withholding from him while actually engaged in the administration of the duties of the office, the deference due the office. Courts and judicial officers while engaged in the careful, earnest and proficient discharge of their duties, should always receive the respect, support and countenance of the bar; and are entitled to expect at all times, from the members of the bar, personal courtesy to a degree equivalent to that which should be extended by the bench to the bar.

3. *The selection of judges.* It is the duty of the bar to exert its strongest influence to prevent political considerations from outweighing judicial fitness in the selection of judicial officers; and to use all its power and influence to place and keep upon the bench of the supreme and district courts of this state capable, experienced and upright lawyers, without regard to party affiliation. It should not hesitate to protest earnestly and actively at all proper and seasonable times against appointment or election of those who are unsuitable for either the supreme or district bench. It should make a continual earnest endeavor to have elevated to those offices only those who are willing to forego other employment, whether of business, political or other character; and to devote their time and attention to the free and fair consideration of questions before them for decision. In the selection of lawyers for judicial positions, the bar should be governed by an impartial estimate of their efficiency and fitness for the office and their ability to add honor thereto, rather than by any consideration of a personal or political nature.

4. *The duties of attorneys in judicial positions to members of the bar.* Those members of the bar who are elevated to judicial positions should, while exercising judicial functions, extend to their brethren engaged in the practice the same personal respect, courtesy and fair dealing that members of the bar are expected and required to extend to each other. Owing to the prestige of the judicial position, it is incumbent upon those occupying it to take the initiative and set an example to the bar in matters of professional courtesy and personal conduct. In his intercourse with members of the bar and with persons generally having busi-

ness in his court, an attorney occupying a judicial station should studiously avoid even the appearance of unfair or partizan dealing or the suggestion that he has or may be subjected to improper personal influences. In the conduct of jury trials he should avoid the appearance of impatience with views expressed by counsel and the expression of any opinion or of any action that might indicate to the jury his state of mind with reference to the facts. A judge who wilfully and knowingly violates canons of personal courtesy and rectitude when engaged in the duties of his office cannot expect the respect or support of his fellow members of the bar.

5. *Attempts to exert improper influence on the court.* Marked attention and unusual hospitality on the part of a lawyer to a judge or the offer of gifts or gratuities of any kind, uncalled for by the personal relations of the parties, subject both the judge and the lawyers to misconstruction of motives and should be avoided. A lawyer should not communicate or argue privately with a judge as to the merits of a pending case and he deserves rebuke and denunciation for any device or attempt to gain from a judge personal consideration or favor. A self-respecting independence in the discharge of professional and official duties with mutual respect, courtesy and consideration between the bench and bar, is the only proper foundation for cordial personal and official relations between them.

6. *Defending a client whom attorneys believe to be guilty.* A lawyer may undertake, with propriety, the defense of a person accused of crime, although he believes him to be guilty; and having undertaken it, he is bound by all fair and honorable means to present such defenses as under the constitution and laws of this state the defendant is entitled to, to the end that no person may be deprived of life or liberty except by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts, or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

7. *Duties of attorneys to their clients.* It is the duty of a lawyer at the time of accepting a retainer to disclose to the client employing him, all the circumstances of his relation to all parties of the action; and any interest in or connection with the controversy which might to any extent whatever influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests in the same suit or transaction. Within the meaning of this section, a lawyer represents conflicting interests, when, in behalf of one

client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences, forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed. In the observance of this obligation a retainer from the opposite party to a pending action in another suit against a different party should be accepted only with great caution.

8. *Dealings of attorneys with opposite party.* During a pending litigation a lawyer should not in any way communicate upon the subject in controversy with the opposite party if he is represented by counsel; much less should he undertake to negotiate or compromise the matter with the opposite party in person, but should deal with him only through his counsel. It is also incumbent upon a lawyer to avoid anything that may tend to mislead the opposite party when not represented by counsel; and he should not in any case or under any circumstances undertake to advise the opposite party as to the law.

9. *Professional colleagues and conflicts of opinion.* A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the bar, but nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

10. *Advising upon the merits of a client's cause.* A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated

litigation. The miscarriages to which justice is subject, by reason of surprises and disappointment in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

11. *Attorneys dealing with trust property.* Money belonging to the client or other trust property coming into the possession of the attorney by reason of his employment, should be reported promptly with all attending circumstances to the client, and immediately paid or delivered over to him.

12. *Fixing attorney's fees.* In fixing fees, lawyers should avoid charges which overestimate the value of their advice and services and the responsibility incurred by employment in a certain case, as well as those that undervalue them. The reasonable requests, of brother lawyer and of widows or orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and consistent client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

13. *Mutual conduct of attorneys in the trial of causes.* When engaged in the trial causes, attorneys should bear in mind that their clients and not themselves are involved as litigants; and that whatever ill-feeling may exist between their clients it should not be allowed to extend to the conduct and demeanor of counsel toward each other or toward the parties or witnesses in the case. All personalities between counsel should be scrupulously avoided and they should practice toward each other the same courtesy which they expect will be extended to them by the bench. Per-

sonal colloquies between counsel directed to each other rather than to the court should also be carefully avoided.

14. *Conduct of attorneys toward witnesses and litigants.* A lawyer should always treat adverse witnesses and suitors with fairness and consideration and he should never minister to the malevolence or prejudices of a client in the conduct of a cause. A client has no right to demand that his counsel shall abuse the opposite party or indulge in any offensive personalities. Improper speech from an attorney is not excusable on the ground that it is such language as the client would use in speaking in his own behalf.

15. *Procuring newspaper discussions of pending litigation.* Newspaper publications procured or written by an attorney as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Such publications are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. Such statement should not, in any event, go beyond quotation from the records and the papers on file in court.

16. *Attorney's candor and fairness.* The conduct of an attorney before the court and in his dealings with other matters should be characterized by candor and fairness. He should not offer evidence which he knows the court should reject in order to get the same before the jury indirectly; nor should he, with a like purpose, address to the judge arguments upon any point not properly calling for determination by him. Neither should he attempt to introduce into an argument properly addressed to the court remarks or statements intended merely to influence the jury.

17. *Attorney's dealing with the jury.* All attempts to curry favors with jurors by fawning, flattering or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of juries, and propositions to dispense with argument, should be made to the court out of the jury's hearing. The lawyer must never converse with jurors about a pending case; and both before and during the trial he should avoid communicating privately with them, even as to matters foreign to the cause.

18. *Rights of attorney in conducting trial.* It is an attorney's right to control the incidents of a trial and to make any reasonable stipulation with reference to the same. In such matters no client has a right to demand that his counsel shall be illiberal or that he do anything therein repugnant to his own sense of honor and propriety.

19. *Taking technical advantage of opposite counsel; agreements with him.* A lawyer should not ignore known customs or practice of the bar of or a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.

20. *Advertising by attorneys.* The most worthy and effective advertisement possible, even for a young lawyer, and especially for his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced upon the public of any locality, but must be the outcome of character and conduct. The publication, or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements, or by personal communication or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether employed by the attorney, or induced by his recommendation of persons in other lines of professional work, business or trade. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, the results of the cases, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable. Publication of complimentary resolutions passed by civic associations or societies or favorable mention in newspapers induced or inspired by friends, or business associates of the attorney is also to be condemned.

21. *Stirring up litigation, directly or through agents.* It is unprofessional for a lawyer to volunteer advice to bring a lawsuit except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation that otherwise would not arise, either in state or federal courts, is unprofessional, and is prohibited by all ethical rules. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit; or to breed litigation by seeking out those with claims for personal injuries or who may by persuasion be induced to commence proceedings in bankruptcy, or those having any other grounds of action in order to secure them as clients or to employ agents or runners for like purposes, or to pay or reward directly or indirectly, those

who bring or influence the bringing of such cases to his office; or to remunerate policemen, court officers, hospital attaches, physicians, or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick, the injured, the insolvent, the ignorant, or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be properly proceeded against.

22. *Upholding the honor of the profession.* Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against any member of the bar, who has wronged his client, or wilfully violated any professional duty. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should willingly formulate charges and assist in bringing to the attention of the supreme court any violation, by an attorney, of this Code of Ethics, which is brought to his attention, and which he has reason to believe is probably true. He should strive at all times to uphold the honor and to maintain the dignity of the profession, and to improve not only the law but the administration of justice.

23. *Justifiable and unjustifiable litigation.* A lawyer may decline to conduct or to make a defense in a civil cause when convinced that the purpose of his client is merely to harass or injure the opposite party or to work oppression and wrong. The appearance of an attorney in court should be deemed equivalent to an assertion, on his honor, that in his opinion, his client is justly entitled to some measure of relief.

24. *Untrue verification of pleadings.* Before verifying pleadings on information and belief, attorneys should carefully inquire and investigate so as to conscientiously satisfy themselves that they have before them sufficient facts to enable them to truthfully verify the cause of action or defense that they represent in the true spirit of the law that permits their so doing. The practice of verifying pleadings upon information and belief merely for the purpose of delay when the truth of allegations sworn to has not been carefully ascertained is unprofessional and a violation of the duties of an attorney as provided by law.

25. *Selection of cases by attorney.* An attorney is not obliged to act either as advisor or advocate for any or every person who may wish to become his client. He may select from the cases offered such business as he is willing to accept and in which he is willing to appear for plaintiff or defendant. For his decision in such matters he is accountable only to his own judgment.

26. *Enforcement of the provisions of this code.* Any member of this association who wilfully and intentionally violates or refuses to observe the provisions of this Code of Professional Ethics touching his conduct and duties as a lawyer shall be subject to charges preferred against him before this association or a committee thereof appointed for the purpose of hearing and determining such matters. After investigation and hearing, such member, by action of the association, may be suspended from the privileges of membership in this association; and, in addition, proceedings for his disbarment may be recommended by this association to the supreme court.

CANONS OF JUDICIAL ETHICS PREAMBLE

In addition to the Canons for Profession Conduct of lawyers which it has formulated and adopted, the Bar Association of North Dakota, mindful that the character and conduct of a judge should never be objects of indifference and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The association accordingly adopts the following canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

1. *Relations of the judiciary.* The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, and the principles of law, the practitioners of law in his court, and the witnesses, jurors, and attendants who aid him in the administration of its functions.

2. *The Public Interest.* Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his ruling and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

3. *Constitutional obligations.* It is the duty of all judges in the United States to support the federal constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guaranties.

4. *Avoidance of impropriety.* A judge's official conduct should be free from impropriety and the appearance of impropriety, he should avoid infractions of law; and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach.

5. *Essential conduct.* He should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

6. *Industry.* He should exhibit an industry and application commensurate with the duties imposed upon him.

7. *Promptness.* He should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors, and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

8. *Court organization.* He should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good-natured acquiescence by friendly association with him.

It is desirable, too where the judicial system permits that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

9. *Consideration for jurors and others.* He should be considerate of jurors, witnesses and others in attendance upon the court.

10. *Courtesy and civility.* The attitude of a judge toward counsel interested in litigation pending before him should be that of habitual and uniform courtesy and civility. He should in his treatment of counsel avoid even the appearance of impatience, arrogance or dogmatic adherence to one side or the other of the controversy. He should not attempt to regulate the attitude or language of counsel except when it is clearly apparent that wilful disrespect to the court is intended.

He should also require, and, so far as his power extends, en-

force on the part of clerks, court officers and counsel, civility and courtesy to the court and to the jurors, witnesses, litigants and others having business in the court.

11. *Unprofessional conduct of attorneys and counsel.* He should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsellors, brought to his attention; and, of course, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating authorities.

12. *Appointees of the judiciary and their compensation.* Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments,

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by consent of counsel.

13. *Kinship or influence.* He should not act in a controversy in the result of which he has even a nominal pecuniary interest; or one in which he has formed an opinion upon a controverted issue of fact or law; or one in which he entertains a feeling of personal bias or prejudice toward either of the parties.

He should not act in a controversy where a near relative is a party, and, if such a course can reasonably be avoided, he should not sit in litigation where a near relative appears before him as a counsel; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person.

14. *Independence.* He should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

15. *Interference in Conduct of Trial.* He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or

terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses he should avoid a controversial manner of tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

16. *Ex parte applications.* He should discourage ex parte hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such ex parte applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigations as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of the defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

17. *Ex parte communications.* He should not permit private interviews, arguments, or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

While the condition under which briefs of arguments are to be received are largely matters of local rule or practice, he should not permit the contents of such briefs presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

18. *Continuances.* Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detri-

ment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

19. *Judicial opinions.* In disposing of controverted cases, a judge should indicate the reason for his action in an opinion showing that he has not disregarded or over-looked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that courts of appeal in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and should not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusions and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

20. *Influence of decisions upon the development of the law.* A judge should be mindful that his duty is the application of general law in particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of the law.

21. *Idiosyncracies and inconsistencies.* Justice should not be

moulded by the individual idiosyncracies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgment, or spectacular or sensational in the conduct of the court. Though vested with descretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

22. *Review.* In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

23. *Legislation.* A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

24. *Inconsistent obligations.* He should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. *Business promotions and solicitations of charity.* He should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private ventures or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. *Personal investment and Relations.* He should abstain

from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information, coming to him in a judicial capacity, for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. *Executorships and trusteeships.* While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. *Partisan Politics.* While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

29. *Self-interest.* He should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is a judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. *Candidacy for office.* A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support and he should do nothing while a candidate to create the

impression that if chosen, he will administer his office with bias, partiality, or improper discrimination.

While holding judicial office he should decline nomination to any other place which might reasonably tend to create a suspicion or criticism that the proper performance of his judicial duties is prejudiced or prevented thereby.

If a judge becomes a candidate for any office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. *Private law practice.* In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such case one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practice in the court in which he is a judge even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practice law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of the law.

32. *Gifts and favors.* He should not accept any presents or favors from litigants or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

33. *Social relations.* It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend

to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

34. *A summary of judicial obligation.* In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to the law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

LIST OF ATTORNEYS REGISTERING FOR
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Adams, S. D., Lisbon.	Knauf, John, Jamestown.
Atkins, A. B., Napoleon.	Kleve, E. O., McClusky.
Austin, J. M., Ellendale.	Keohane, John, Beach.
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Amundson, M. H., Bowman.	Krause, T. J., Mandan.
Angus, Alice, Bismarck.	Leighton, K. E., Minot.
Avery, M. D., Bismarck.	Larson, E. G., Bismarck.
Boehm, Paul W., Hettinger.	Lawrence, Aubrey, Fargo.
Buttz, C. W., Devils Lake.	Lewis, John H., Minot.
Burnett, W. F., Fargo.	Lembke, F. T., Hettinger.
Benson, O. B., Bottineau.	Lynch, C. J., Bismarck.
Burnham, C. W., Carrington.	Lynn, H. C., Linton.
Beede, A. McG., Fort Yates.	Liessman, Chas., Bismarck.
Burke, Thos. J., Bismarck.	Lemke, Wm., Fargo.
Berry, H. L., Mandan.	Lovell, V. R., Fargo.
Burke, John, Bismarck.	Lindell, G. A., Washburn.
Bagley, Horace, Towner.	Ludwigs, A. A. Ashley.
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Burr, A. G., Rugby.	Morton, R. C., Carrington.
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Bradford, B. H., Minot.	Meldahl, E. T., Finley.
Butler, P. H., Bismarck.	Manly, Jas. A., New Rockford.
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Connolly, L. H., Mandan.	McIntyre, W. A., Grand Forks.
Cox, Gordon, Bismarck.	Moelling, Geo. H., Williston.
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Clark, P. M., Mohall.	Register, Geo. M., Bismarck.
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Crum, Chas. L., Bismarck.	Ripley, E. A., Mandan.
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Davis, C. B., Minot.	Shafer, Geo. F., Bismarck.
Dunn, Robert, Center.	Schwartz, David, Golden Valley
Dahl, T. I., Grafton.	Shaft, H. D., Bismarck.
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Jas. Morris, Carrington.	Thos. Devaney, Langdon.
Fred E. Harris, Grand Forks.	John Keohane, Beach.
E. T. Conmy, Fargo.	H. G. Owens, Grand Forks.

Citizenship and Americanization

A. G. Porter, Chairman, Edgeley.